



(916) 445-4538

July 11, 1980

Pursuant to your request of June 19, we have reviewed the February 6, 1976, document you attached and have the following comments:

The question of whether the person whose name appears on the deed is the true owner of the property is a question of fact. Normally, as you are aware, the person whose name appears on the deed would be presumed to be the owner of the property in question. However, if one could prove that person is merely acting as an agent of another, then the true owner of the property would be the agent's principal. Therefore, a transfer of the property from the agent's name to his principal would, in my opinion, not be regarded as a change in ownership.

The February 6, 1976, letter would, in my opinion, establish the agent/principal relationship. The only suggestion I have is that when and if a piece of property is acquired pursuant to such an arrangement that an addendum be made to the agreement specifically delineating the piece of property that is being acquired. It should be remembered my opinion is advisory only and a particular county counsel may disagree with it. In such a case, the county would normally follow its counsel's advice.

Very truly yours,

GLR:sfg

Glenn L. Rigby
Assistant Chief Counsel



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No. 86/50

July 3, 1986

TO COUNTY ASSESSORS:

CHANGES IN OWNERSHIP OF AIR RIGHTS

The question has arisen whether transfers of air rights can be changes in ownership under Revenue and Taxation Code Section 60.

The air rights under discussion here are those air rights located directly above the land surface which establishes their legal description. In utilizing land, two or more parties can have separate and distinct ownership or control of real property located in different horizontal planes yet resting on the same plot of land. Each owner can put his/her particular plane of ownership to separate and legally independent use.

Section 60 mandates three requirements for a transfer to qualify as a change in ownership:

1. A present interest in real property.
2. The right to beneficial use of the property.
3. The value of the property transferred must be substantially equivalent to the fee interest.

It is our opinion that transfers of the air rights described above can fulfill the above three requirements. They are considered real property by Property Tax Rule 124 which classifies them as land. Since these rights are real property and part of land, a transfer of a present fee interest in air rights separate from the surface rights is legally possible and, under Section 60, would constitute a change in ownership of "land." Therefore, there should be a reappraisal of that portion of the land that changes ownership.

If you have any questions, please contact our Technical Services Section at (916) 445-4982.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:wpc
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